# Purpose

1.1 To outline appropriate uses and disclosures of protected health information (PHI) of the deceased clients, adults, and minors requiring an authorization from personal representatives in accordance with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("the HIPAA Privacy Rule"). (Authority 1)

## Definition

2.1 **Authorization**: A document signed by the client or client's legal representative to give Los Angeles County Department of Mental Health (LACDMH) permission to use PHI for specified purposes other than treatment, payment, or health care operations, or to disclose PHI to a third party.

2.2 **Disclosure**: With respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of LACDMH.

2.3 **Health Care Operations**: Any of the following activities of a covered entity that relate to its covered functions:

   2.3.1 Conducting quality assessment and improvement activities;

   2.3.2 Reviewing the competence or qualifications of health care professionals;

   2.3.3 Underwriting (except as prohibited when involving genetic information), enrollment, premium rating, and other activities related to the creation,
renewal, or replacement of a contract of health insurance of health benefits;

2.3.4 Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

2.3.5 Business planning and development; and

2.3.6 Business management and general administrative activities of the covered entity.

2.4 Minor: A person under the age of 18.

2.4.1 Unemancipated Minor: A person under the age of 18 and under the legal authority of parents or legal guardian;

2.4.2 Emancipated Minor: A person under the age of 18 considered an adult for consenting to medical care. An emancipated minor is one who comes within any of the following categories:

2.4.2.1 A person declared emancipated by court order. Minors 14 years of age or older may petition a state court for emancipation.

2.4.2.2 A person on active duty with the United States armed forces.

2.4.2.3 A person entered into a valid marriage, whether or not still married.

2.4.3 Self-sufficient Minor: A person who is 15 years of age or older living separate and apart from his/her parents or legal guardian and managing his/her own financial affairs regardless of the source of income.
2.4.3.1 A self-sufficient minor may consent to his/her medical care without parental consent.

2.5 **Personal Representative:** A person with legal authority or appointed by client to act on behalf of the client in making decisions related to health care. A personal representative includes:

2.5.1 A person with health care power of attorney or court appointed legal guardian or Lanterman-Petris-Short (LPS) conservator of an adult or emancipated minor.

2.5.2 A parent or legal guardian of an unemancipated minor.

2.5.3 An executor or administrator, next of kin, or other family member (if relevant law provides authority) of a deceased client or deceased client's estate.

2.6 **Protected Health Information (PHI):** Individually identifiable health information held or transmitted by LACDMH or its business associate(s), in any form or medium, whether electronic, paper, or oral. This information relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual.

2.7 **Use:** With respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within LACDMH.
3.1 LACDMH must treat the personal representative of a deceased client, a dependent adult and an emancipated minor, or an unemancipated minor as the client in making decisions regarding the use and disclosure of PHI in accordance with the HIPAA Privacy Rule.

PROCEDURE

4.1 Personal Representative of Deceased Clients: (45 CFR 164.502(g)(4))

4.1.1 If under applicable law an executor, administrator, or other person has the authority to act on behalf of a deceased client or of the client’s estate, LACDMH must treat such person as a personal representative in making decisions regarding the deceased client’s PHI.

4.1.1.1 LACDMH must verify the identity and authority of a person claiming to be the executor, administrator, or other person with authority to act on behalf of the deceased client in accordance with LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information. (Reference 3)

4.1.1.2 After the person has been properly identified as the personal representative, LACDMH must obtain a signed Authorization for Use or Disclosure of Protected Health Information Form from the personal representative. (Attachment 1)

4.1.2 The following exceptions permit LACDMH to disclose the PHI of a deceased client for purposes outside the scope of treatment, payment, and health care operations without an authorization from the personal representative:
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<td>USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION OF DECEASED CLIENTS, ADULTS, AND MINORS REQUIRING AN AUTHORIZATION FROM PERSONAL REPRESENTATIVES</td>
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4.1.2.1 Disclosure of PHI to coroners (45 CFR 164.512(g)(1));

4.1.2.2 Disclosure of PHI to medical examiners (45 CFR 164.512(g)(1));

4.1.2.3 Disclosure of PHI to funeral directors (45 CFR 164.512(g)(2));

4.1.2.4 Disclosure of PHI to alert a law enforcement official of the death of the client if LACDMH has a suspicion that such death may have resulted from criminal conduct (45 CFR 164.512(f)(4)); and

4.1.2.5 Disclosure of PHI for research purposes (45 CFR 164.512(i)(1)(iii) and LACDMH Policy No. 500.05, Uses and Disclosures of Protected Health Information for Research). (Reference 2)

4.1.3 If any of the exceptions in Section 4.1.2 apply, LACDMH must document the disclosure using Disclosure of Protected Health Information of Deceased Client without Authorization Form (Attachment 2) and the applicable exception under which it was made.

4.2 Personal Representatives of Adults or Emancipated Minors: (45 CFR 164.502(g)(2))

4.2.1 If under applicable law a person has authority to act on behalf of a client who is an adult or emancipated minor in making decisions related to health care, LACDMH must treat such person as a personal representative responsible for making decisions regarding the use and disclosure of the client’s PHI.
4.2.1.1 LACDMH must verify the identity and authority of a person claiming to be a personal representative of the adult or emancipated minor in accordance with LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information. (Reference 3)

4.2.1.2 After the person has been properly identified as the personal representative, LACDMH must obtain a signed Authorization for Use or Disclosure of Protected Health Information Form from the personal representative. (Attachment 1)

4.3 Personal Representatives of Unemancipated Minors: (45 CFR 164.502(g)(3))

4.3.1 If under applicable law of a parent, guardian, or other person acting in loco parentis (in the place of a parent) has the authority to act on behalf of a client who is an unemancipated minor in making decisions related to health care, LACDMH must treat such person as a personal representative who is responsible for making decisions regarding the use and disclosure of such unemancipated minor’s PHI.

4.3.1.1 LACDMH will verify the identity and authority of a person claiming to be a personal representative of the unemancipated minor in accordance with LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information. (Reference 3)

4.3.1.2 After the parent or guardian has been properly identified as the personal representative, LACDMH must obtain a signed Authorization for Use or Disclosure of Protected Health Information Form from the personal representative. (Attachment 1)
4.3.2 Exceptions to Personal Representative Procedure for Unemancipated Minors (45 CFR 164.502(g)(3)(i)(A)-(C))

4.3.2.1 An unemancipated minor has the authority to act as an individual with regard to PHI and a parent cannot act as the unemancipated minor's personal representative if:

- The unemancipated minor consents to health care service(s) by law and the minor has not requested that any other person be treated as the personal representative;
- The unemancipated minor may lawfully obtain the health care service(s) without the consent of a parent and the minor, a court, or another person authorized by law consents to such health care service(s); or
- The parent or guardian assents to an agreement of confidentiality between LACDMH and the unemancipated minor with respect to health care service(s) provided.

4.3.2.2 If any of the exceptions set forth in Section 4.3.2.1 apply, LACDMH is responsible for ensuring that it obtains an Authorization from the unemancipated minor regarding the use and disclosure of the unemancipated minor's PHI in accordance with LACDMH Policy No. 500.03, Minimum Necessary Requirements for Using and Disclosing Protected Health Information. (Reference 1)

4.4 Situations Warranting Disregard of Personal Representative: (45 CFR 164.502(g)(5))

4.4.1 LACDMH may elect not to treat a person as a client's personal representative under this policy if:
4.4.1.1 LACDMH has a reasonable belief that the client has been or may be subjected to domestic violence, abuse or neglect by the person claiming to be the personal representative; or treating the person as the personal representative could endanger the client; and

4.4.1.2 LACDMH, in its professional judgment, decides that it is not in the best interest of the client to treat the person as the client's personal representative.

4.4.2 If Section 4.4.1 applies, the following steps should be taken:

4.4.2.1 LACDMH will notify the person claiming to be the personal representative that LACDMH will not consider him/her as the client's personal representative.

4.4.2.2 LACDMH will immediately document the reasons why it has chosen not to consider the person as the personal representative and must clearly state the basis of the reasonable belief that warrants disregard of the personal representative.

4.4.2.3 LACDMH, with advice from legal counsel, may, in certain instances, as soon as practicable, petition the court to appoint a temporary guardian pending resolution of the matter in the event that another personal representative must be appointed to make decisions regarding the client's PHI.

4.5 All documents required to be created or completed under this policy will be retained for a period of at least eight (8) years from the date of its creation or the date when it was last revised in effect, whichever is later.
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**AUTHORITY**

1. Code of Federal Regulations Title 45 Parts 160 and 164

**ATTACHMENT (HYPERLINKED)**

1. [Authorization for Use and Disclosure of Protected Health Information](#)
2. [Disclosure of Protected Health Information of Deceased Client without Authorization Form](#)

**REFERENCE (HYPERLINKED)**

1. [LACDMH Policy No. 500.03, Minimum Necessary Requirements for Using and Disclosing Protected Health Information](#)
2. [LACDMH Policy No. 500.05, Use and Disclosure of Protected Health Information for Research](#)
3. [LACDMH Policy No. 500.06, Verification of Individuals Requesting Protected Health Information](#)

**RESPONSIBLE PARTY**

LACDMH Compliance, Privacy, and Audit Services Bureau